

Notice of Allowability

Application No.

10/779,996

Examiner

Sharon E. Payne

Applicant(s)

STEINBERG, BENJAMIN H.

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 29 December 2005.
2. ☒ The allowed claim(s) is/are 1-28.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 1205
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 0306
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

Information Disclosure Statement

The information disclosure statement filed 29 December 2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because references that have already been cited are cited again on the form. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a). (The new reference was considered, but the others were not.)

Amendment to the Claims

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bryan Redding on 10 March 2006.

The application has been amended as follows:

In the Claims

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In claim 14, line 2, delete "#11 in Figure 1".

In claim 15, line 2, delete "#10 in Figure 1".

In claim 16, line 2, delete "#10 in Figure 1".

In claim 16, line 3, delete "#10".

In claim 16, line 4, delete "#11 in Figure 1".

In claim 17, line 5, delete "or similar means".

In claim 18, line 2, delete "#11 in Figure 1".

In claim 19, line 2, delete "#10 in Figure 1".

In claim 19, line 3, delete "#10".

In claim 19, line 4, delete "#11 in Figure 1".

In claim 20, line 2, delete "#10 in Figure 1".

In claim 20, line 3, delete "#10".

In claim 20, line 4, delete "#11 in Figure 1".

In claim 23, line 4, delete ", such as a one way ratchet mechanism".

In claim 27, line 4, delete ", such as a one way ratchet mechanism".

These changes are necessary to make the claims conform to requirements of 35 USC 112 and other formal requirements of the patent laws.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance. The prior art fails to show a chemiluminescent device with the following features:

1) a means whereby the chemicals can be removed from the container and new chemicals introduced, separately, into the two chambers to allow for further chemiluminescent reactions as recited in claims 1, 13 and 21; and

2) each chamber being separated by gaskets to prevent unintended leakage from one chamber to another as recited in claim 17.

Regarding claim 7, Fanelsa (DE 3411194 A1) discloses a means for a graduated introduction of chemicals, and Ladyjensky (U.S. Patent 5,488,544) discloses the other elements, but no motivation exists to combine the references.

Concerning claim 25, Fanelsa discloses the means in which to allow a controlled graduated introduction of one of the chemicals from one chamber into the other, while Postal (U.S. Patent 3,800,132) discloses the opaque inner chamber and Ladyjensky discloses the other elements. However, no motivation exists to combine any of the references with each other.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Payne whose telephone number is (571) 272-2379. The examiner can normally be reached on regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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